IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.33 of 2001

Decided on: March 23, 2007

Aman Deep and another **…..Appellants.**

VERSUS

Smt. Sukhan Devi and others **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. R.K. Sharma, Advocate.

For the Respondents : None for respondents No.1 & 2.

Mr. B.M. Chauhan, for respondent No.3.

Surjit Singh, Judge (Oral)

This appeal by the owner and the alleged driver of the vehicle, i.e. Scooter No.HP-22-1294 has been filed against the award of the Motor Accident Claims Tribunal, whereby they have been ordered to pay compensation, amounting to Rs.2,35,000/-, and the Insurance Company has been absolved of its liability with the finding that the vehicle was being driven by appellant No.1 Aman Deep, who is son of appellant No.2 Balbinder, at the time of the occurrence of the accident and he was not only not possessing a driving license but was also not eligible for grant of license, on account of his being minor.

2. The grievance of the appellants is that the finding of the Tribunal that the vehicle was being driven by appellant Aman Deep is

---

Whether the reporters of the local papers may be allowed to see the Judgment?

contrary to the evidence on record. According to the appellants, the scooter was being driven by appellant Balbinder, who held a valid driving license, at the time when the accident took place. It is also the grievance of the appellants that the age of the deceased, as per the claimants' own evidence, was 65 years, though according to the evidence adduced by them it was even more than that, i.e. 70 years, but the Tribunal has held the age to be 51 years and applied the multiplier of 8 years' purchase.

3. I have heard the learned counsel for the appellant and also gone through the record. Nobody is present for the claimants.

4. The Tribunal has observed that in the reply, the appellants nowhere denied the averment of the claimants that the scooter was being driven by appellant Aman Deep and, therefore, it has to be assumed that it was being driven by the said appellant. The observation of the Tribunal to this effect is contrary to the factual position. In Para-9 of the reply filed by the appellants, it has categorically been stated that the vehicle was being driven, at the relevant time, by appellant Balbinder Singh, who was impleaded as respondent No.2 in the claim petition. The Tribunal has failed to notice this part of the reply filed by the appellants.

5. Now coming to the evidence led by the parties on the point as to who was driving the scooter, the FIR was lodged by one Tilak Raj. In the FIR, it is stated that the scooter was being driven by appellant Aman Deep son of appellant Balbinder. However, Tilak Raj, who lodged the FIR and who claimed to have recognized Aman Deep as the driver of the scooter, was not examined nor was any explanation put forward for withholding him. The FIR could have

been used only for corroboration and not as substantive evidence. Claimants examined no witness in support of their allegation that the vehicle was being driven by Aman Deep. An eye-witness examined by the claimants, namely PW-2 Birbal Dass, not only did not say in his examination-in-chief as to who was driving the scooter but even when questioned specifically in the cross-examination, stated that he did not know as to who was driving the scooter. No other evidence was led by the claimants qua this aspect of the matter. That means there was absolutely no evidence from the side of the claimants in support of the allegation that the scooter was being driven by Aman Deep appellant.

6. Appellant Balbinder appeared as RW-1 and categorically stated that it was he who was driving the scooter when the accident took place. He denied the suggestion put to him on behalf of the Insurance Company in the cross-examination that the scooter was being driven by his son Aman Deep appellant. However, the claimants put a suggestion to him that he was driving the scooter at very fast speed, meaning thereby that the claimants admit that the scooter was being driven by him (appellant Balbinder). RW-2 Bihari Lal stated that the scooter was being driven by appellant Balbinder and not by appellant Amand Deep.

7. Insurance Company examined one ASI, named Surti Ram, as RW-5, who stated that in the course of the investigation he found that the scooter was being driven by appellant Aman Deep. The witness must have recorded the statements of some witnesses to come to the finding that the scooter was being driven by Aman Deep. Therefore, it was the evidence of those witnesses, who might have

stated this fact to RW-5 Surti Ram, that ought to have been adduced. The Insurance Company did not examine any of those persons. The evidence of RW-5 is nothing but hearsay and thus inadmissible.

8. From the abovestated position, it is clear that there was no evidence on record that the scooter was being driven by appellant Aman Deep. On the contrary, there was positive and definite evidence that it was being driven by appellant Balbinder Singh. Hence, the finding of the Tribunal that the scooter was being driven by Aman Deep, who did not hold driving license and as such the Insurance Company is not liable, cannot be upheld and is accordingly reversed.

9. Turning to the question of quantum of compensation, the Tribunal has, on the basis of averment in para-3 of the claim petition, held the age of the deceased to be 51 years. However, there was no evidence from the side of the claimants in support of this averment. On the contrary, a witness examined by the claimants themselves, namely PW-3 Desh Raj, categorically stated that the age of the deceased was 65 years. In the Medico Legal Report that was prepared soon after the deceased was taken to the hospital in an injured state, his age is recorded as 70 years. In the postmortem report his age is recorded as 65 years. In the Panchayat record his age is shown to be 70 years. In the face of this evidence, the Tribunal was not justified in assuming the age of the deceased to be 51 years. The age of the deceased was not less than 65 years, in any case. Looking to the age of the deceased, the multiplier of more than 5 years' purchase could not have been adopted. Dependency of the claimants upon the deceased has been worked out at Rs.2,000/-

by the Tribunal. Thus, the respondents-claimants, who are the widow and the son of the deceased, are entitled to Rs.1,20,000/-, on account of dependency, as against the amount of Rs.1,92,000/- awarded by the Tribunal. Consequently, the total amount of compensation, i.e. Rs.2,35,000/-, awarded by the Tribunal is required to be reduced by an amount of Rs.72,000/- and when so reduced the amount of the total compensation payable to the claimants comes to Rs.1,63,000/-.

10. In view of the abovestated position, appeal is accepted and on account of the acceptance of the appeal and in view of the above discussion, the award of the Tribunal is modified in the following terms:

The claimants are awarded a sum of Rs.1,63,000/-, together with interest at the rate of 9% per annum from the date of the filing of the petition and the appellants and respondent No.3, i.e. New India Insurance Company, with which the scooter was insured at the relevant time, are ordered to satisfy the award, jointly and severally.

11. Appeal stands disposed of accordingly.

CMP No.82/2001

Infructuous.

(Surjit Singh)
Judge.

March 23, 2007(sd)